IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18912 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAICHELABHAIAHIR - Petitioner(s)

Versus

STATEOFGUJARAT & 6 - Respondent(s)

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Appearance :

MR SHAKTISINH GOHIL for Petitioner(s) : 1,
Mr. Dipen Desai, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4,4.2.1 - 5, 7,7.2.2
MR DHIRENDRA MEHTA for Respondent(s) : 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.3.1, 4.3.2, 4.3.3,4.3.4 - 5, 5.2.2,5.2.3 - 7, 7.2.3, 7.3.1,7.3.2

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/10/2005

ORAL JUDGMENT

Rule. With the consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat, dated 18th July 2005 in Revision Application No. 39/2005 in dismissing the same on the ground of delay.

3. It appears from the record that the petitioner had challenged the order passed by the Collector, Surat dated 18.7.2002 in RTS Revision Application No. 7/2001 and as there was delay of 1 year and 7 months (according to the petitioner 1 year and 7 months) an application for condonation of delay was submitted. It was submitted on behalf of the petitioner that the copy of the order was not served upon the petitioner and as soon as he came to know in the month of December 2004 when somebody tried to disturb possession he had immediately applied for the certified copy of the order on 27.12.2004 and thereafter the revision application came to be filed along with delay condonation application. The said application came to be dismissed on the ground of limitation by Additional Secretary (Appeals) by observing that the application of the petitioner dated 11th February 2005 for condonation of delay was not required to be accepted, prima facie. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil

Application under Article 226/227 of the Constitution

of India.

3. Shri Shaktisinh Gohil, learned advocate appearing for the petitioner has vehemently submitted that while rejecting the revision application as well as the application for condonation of delay submitted by the petitioner the revisional authority has not assigned any reason whatsoever as to why the application submitted by the petitioner is not required to be accepted and the delay is not required to be condoned. He has also further submitted that as such the revisional authority has also not discussed as to whether there was sufficient ground made out on behalf of the petitioner for condonation of delay and straightway without considering the application and/or assigning any reason the application for condonation of delay has been rejected.

4. Shri Dhirendra K. Mehta, learned advocate appearing on behalf of the contesting respondent has vehemently opposed the present Special Civil Application and has submitted that even if it is assumed that there was a delay of one year and 7 months still no sufficient cause has been shown by the petitioner for condonation of delay in preferring the revision application belatedly and such applications are rightly rejected by the Secretary (Appeals). Shri Dipen Desai, learned AGP has requested to pass an appropriate order as deemed fit.

5. Heard the learned advocates appearing on behalf of the parties. It was the contention on behalf of the petitioner in the application for condonation of delay that copy of the order was not served upon the petitioner; he came to know about the same when somebody tried to disturb the possession in December 2004 and immediately thereafter they applied for certified copy of the order on 21.12.2004; and on getting the same filed the revision application. It is required to be noted that while dismissing the revision application on the ground of limitation and also the application for condonation of delay, no reason has been assigned by the revisional authority, except in one line that the application dated 11th February 2005 for condonation of delay is not required to be accepted prima facie. The revisional authority has also not considered whether there was sufficient reason and/or cause shown by the petitioner for condonation of delay and/or for not filing the revision application within time. Nothing is on record whether the copy of the order which came to be challenged by the petitioner before the revisional authority was served upon the petitioner or not. Even otherwise, as held by the Hon'ble Supreme Court as well as by this Court, normally cases are required to be decided rather than dismissing the same on technicalities. In view of the above facts and circumstances, the petition requires to be allowed by quashing and setting aside the order passed by the Secretary (Appeals) and the

matter is required to be remanded to the revisional authority for deciding the same in accordance with law and on merits.

6. For the foregoing reasons, the petition succeeds. The order passed by the Secretary (Appeals) dated 18th July 2005 in Revision Application No. 39/2005 is hereby quashed and set aside. The delay caused in preferring the said Revision Application is hereby condoned. The matter is remanded to the Additional Secretary (Appeals), Revenue Department, State of Gujarat, for deciding the same in accordance with law and on merits. It is, however, made clear that this Court has not expressed any opinion on the merits of the case. Rule is made absolute. However, there will be no order as to costs. As requested, Direct Service of this order is permitted upon respondents No. 1 and 2.

[M.R. Shah, J.]

RMR.